an analysis unnecessary. *Id.* As in *Buckley*, Vermont's Act 64 is "comprehensive reform legislation," *id.* at 7, and should be considered by this Court as a whole.

The contribution limits should also be reviewed because the expenditure limits were enacted, in part, as the legislative antidote to the time problem caused by the Act's extraordinarily low contribution limits. As Chief Justice Walker noted, the Second Circuit has "given its blessing to circular, self-justifying legislation." App. 330a. "[T]he Vermont law's contribution limits increase demands on candidates' time, and the expenditure limits are then justified on the basis of time pressures that the law itself has intensified." *Id.* at 331a.

**4. This Court Should Grant Review of Act 64's Presumption of Coordination.**

Respondents deny that there is a conflict between the Second and Eighth Circuits in regard to the presumption of coordination. They argue that the Eighth Circuit's decision in *Iowa Right to Life Comm., Inc. v. Williams*, 187 F.3d 963 (8th Cir. 1999), striking down a presumption of coordination, does not conflict with the Second Circuit's decision upholding such a presumption. Respondents attempt to distinguish the cases, characterizing the provisions as "very different" and the Iowa statute as "far more burdensome." VPIRG Br. in Opp. 28.[6] Respondents insist that Act 64's presumption "places no burden on a candidate to take any particular action in response to an independent expenditure." VPIRG Br. in Opp. 29. Respondents are incorrect that candidates suffer no burden under this provision. Candidates are forced, upon an enforcement

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[6] Refers to Respondent-Intervenors' Brief In Response And Partial Opposition To Petitions For Writs of Certiorari filed by Vermont Public Interest Research Group, Inc., *et al.*, joined by Sorrell, *et al.* in the arguments regarding Act 64's presumption.

action or lawsuit filed by an opponent, to attempt to repudiate that an expenditure was made on their behalf, even though there is absolutely no evidence of control, cooperation, or prearrangement by the candidate. This places a severe burden on candidates, draining their time and limited campaign funds (especially in light of the Act's expenditure limits), and chilling what should be protected speech. The Second Circuit's decision upholding this presumption directly conflicts with the Eighth and First Circuits and with this Court's decisions requiring some showing of control, cooperation, or prearrangement with a candidate before an expenditure may be treated as coordinated with the candidate's campaign.

## CONCLUSION

This Court should grant certiorari for all three of the questions presented.

Respectfully submitted,

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Supreme Court, U.S.
FILED
JUN 14 2005
OFFICE OF THE CLERK

Nos. 04-1528 and 04-1530

# In The Supreme Court of the United States

NEIL RANDALL, et al.,

*Petitioners,*

v.

WILLIAM H. SORRELL, et al.,

*Respondents.*

VERMONT REPUBLICAN STATE COMMITEE, et al.,

*Petitioners,*

v.

WILLIAM H. SORRELL, et al.,

*Respondents.*

**On Petitions For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit**

## BRIEF *AMICUS CURIAE* OF SENATORS BILL BRADLEY AND ALAN SIMPSON IN SUPPORT OF THE RESPONDENTS-CONDITIONAL CROSS PETITIONERS AND THE RESPONDENT-INTERVENORS-CONDITIONAL CROSS PETITIONERS

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## STATEMENT OF INTERESTS OF *AMICI CURIAE*

*Amici* former Senators Bill Bradley and Alan Simpson urge the Court to grant the petition for a writ of certiorari. This case addresses a constitutional question of great magnitude concerning the application of this Court's First Amendment jurisprudence in the context of campaign finance reform.[1] The issue presented herein is whether the State of Vermont's campaign expenditure limits are justified by a compelling government interest.

Bill Bradley is a former United States Senator, and a Democrat from New Jersey. He was first elected to the United States Senate in 1978, and served three full terms, from 1979 to 1997. In addition, Senator Bradley ran for the Democratic Party nomination for President of the United States in the 2000 election cycle.

Alan Simpson is a former United States Senator, and a Republican from Wyoming. He was also first elected to the United States Senate in 1978, and served three full terms, from 1979 to 1997.

Having served the nation in the United States Senate, *amici* swore an oath to "support and defend the Constitution of the United States" and to "well and faithfully discharge the[ir] duties."[2] In addition to their service in the

---

[1] Counsel for all parties have consented to the filing of this brief, and *amici* have filed those consents with the Clerk of the Court. No counsel for a party in this case authored this brief in whole or in part, and no person or entity, other than the undersigned *amici* and their counsel, has made a monetary contribution to this brief's preparation and submission.

[2] http://www.senate.gov/artandhistory/history/common/briefing/Oath_Office.htm.

Senate, *amici* have raised millions of dollars for their campaigns, for their respective parties, and for other candidates. *Amici* are proud of their service in the legislative branch; however, as former members of a coordinate branch, they feel compelled to advise the Court of their utmost concern for the problem presented. With a sense of continuing obligation to serve to the nation, *amici* file this brief in support of the Respondents-Conditional Cross Petitioners and the Respondent-Intervenors-Conditional Cross Petitioners.

## SUMMARY OF THE ARGUMENT

This case raises the question whether the immense time commitment of fundraising detracts excessively from the effective performance of duty by elected officials. *Amici* posit that due to the demands of fundraising, it is difficult for elected officials to fulfill their duties, and that the Constitution therefore permits government to place limits on campaign expenditures. For this reason, the Court should grant this petition for certiorari to address the constitutionality of the State of Vermont's campaign expenditure limits. The instant case provides the Court with an opportunity to consider issues central to the integrity of our system of representative democracy, as States and localities across the nation seek to address the impact of fundraising on campaigns and on officials' performance in elected office.

The petition for a writ of certiorari should be granted because there is a compelling government interest in protecting the time of elected officials from the excessive demands of fundraising. Without limits on campaign expenditures, campaign costs have escalated and fundraising has become an inordinately time-consuming job for

candidates and office holders fearful of being out-matched by their opponents' spending. As a result, the ability of elected officials to perform their duties has diminished, the quality of representation has declined, and the integrity of elected office has been undermined. Preserving the time of elected officials from the burdens of constant fundraising presents a compelling interest supporting campaign expenditure limits, an interest which was not before the Court in *Buckley v. Valeo*, 424 U.S. 1 (1976).

## REASONS FOR GRANTING THE WRIT

### I. THE SPIRALING COSTS OF CAMPAIGNS TAKES ELECTED OFFICIALS AWAY FROM THEIR SWORN DUTIES.

#### A. In the Absence of Spending Limits, Campaign Costs in Federal, State and Local Elections Have Escalated.

In the 28 years since the Court decided *Buckley v. Valeo*, the costs of running a successful campaign for local, state or national office have rapidly escalated. In 1978, *Amicus* Senator Bradley spent $1,688,499 in his campaign for a United States Senate seat in New Jersey. CENTER FOR RESPONSIVE POLITICS, BILL BRADLEY; bradbil.pdf, *available at* http://www.opensecrets.org. In 1990, a mere twelve years later, *Amicus* Senator Bradley spent nearly $12.5 million in his reelection bid, raising approximately forty thousand dollars per week, every week for six years. Likewise, in the 1990 senatorial race in Wyoming, *Amicus* Simpson spent $1,443,298 to win re-election, 3.3 times the amount spent in 1978. CENTER FOR RESPONSIVE POLITICS, ALAN SIMPSON; simpsala.pdf, *available at* http://www.opensecrets.org.

Overall Congressional candidate fundraising increased 425 percent between 1978 and 2000, compared to 170 percent inflation during the same period. U.S. PUBLIC INTEREST RESEARCH GROUP, LOOK WHO'S NOT COMING TO WASHINGTON 7 (2003). From 1986 to 2000, the average cost of a successful campaign for the United States House of Representatives rose from $359,577 to $848,296. *Id.* Adjusted for inflation, this amounts to a 151 percent increase. Similarly, the average victorious Senate campaign in 1986 cost $3,067,559 compared to $7,389,176 in 2000 – a 154 percent increase, adjusted for inflation. *Id.*[3]

In the realm of presidential politics, spending has escalated at an even more alarming rate. In his bid for the Democratic Presidential Nomination in 2000 Senator Bradley, although no longer a member of the Senate, raised $8,607,781 in campaign contributions in his most successful fundraising quarter. FEDERAL ELECTION COMMISSION, "Large Fundraising Quarters in Pre-Election Years For Presidential Primary Campaigns," *available at* http://www.fec.gov (measured from October 1, 1999 through December 31, 1999). Sitting Vice President Al Gore, the eventual Democratic Party nominee for President, had his largest fundraising quarter in the first quarter of 1999 during which time he raised $8,881,976. *Id.* (measured from January 1, 1999 through March 31,

[3] The following breakdown is particular noteworthy. In 1992, the average Senator had to raise nearly $13,000 each week for the entire six-years term in order to amass the amount that a winning Senate race would cost. Herbert Alexander, FINANCING POLITICS: MONEY, ELECTIONS, AND POLITICAL REFORM 54 (1992). By 2001, Senator Barbara Boxer estimated that for a successful Senate campaign in California, a candidate would need to raise $10,000 *per day*. 145 Cong. Rec. S 12575, S 12608 (daily ed. Oct. 14, 1999) (statement of Senator Barbara Boxer).